



# Legal Research法律检索

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# Housekeeping

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- Your purposes to take this class?
- Your English?
- Have you used Chinalawinfo, Westlaw, Lexis, or Heinonline?
- Your outcomes?
- Pathfinder for your dissertation



书到用时方恨少



書到我時方恨多

胡武



一九八六年七月  
華君武





# 受过检索训练和没受过检索训练

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- 没受过检索训练型：顺藤摸瓜，查阅已有研究；缺乏创新
- 受过检索训练型：按图索骥，搜集可用素材；日积月累，李贺锦囊；



# What is legal research?

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- How to find legal authorities: the process of
  - searching the relevant legal authorities governing your issues,
  - finding materials explaining or analyzing those legal authorities, and
  - sometimes, identifying distinguishing facts to support your advocates.



## How is this class different?

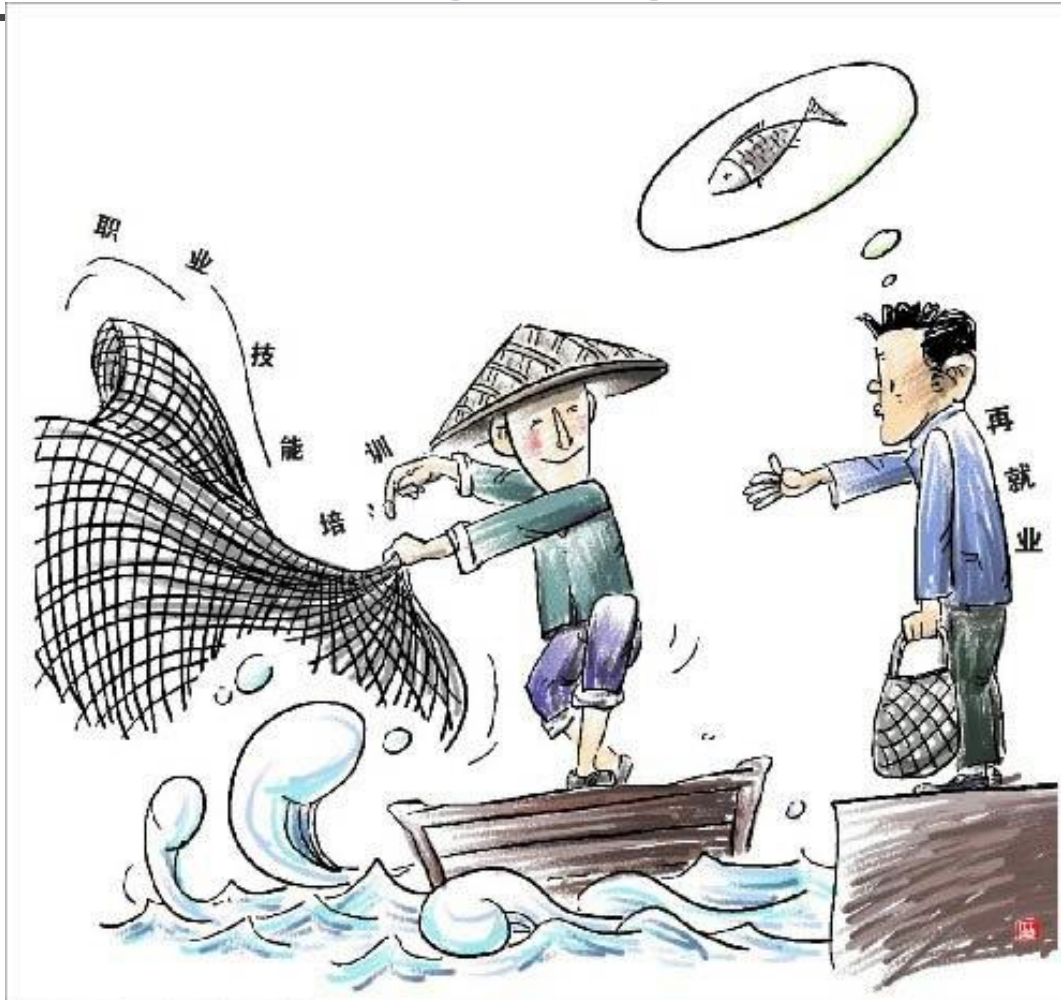
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1. This is not a doctrinal class. In your other classes you are learning about the law and how to think like a lawyer.
2. This is a skills course; it is about teaching you to use the tools of your profession.





“Teaching people how to fish is better than giving people fish.”



授人以鱼不如授人以渔

图/ 冯印澄 新华社发





# 法律检索的重要性

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- 美国律师职业道德
  - Relationship to Clients
    - 有能力，能胜任的律师  
（“**competent lawyer**”）



# Why Do Legal Research?

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1. Legal duty: many courts require, such as the Federal Rule of Civil Procedure:
  - to provide existing laws to support your claim or defenses
2. ABA Model Rule of Professional Responsibility 3.3(a): a lawyer should not knowingly
  - make a false statement of material fact or law to a tribunal, or
  - fail to disclosure legal authority ... to be directly to be adverse to the position of the client ...



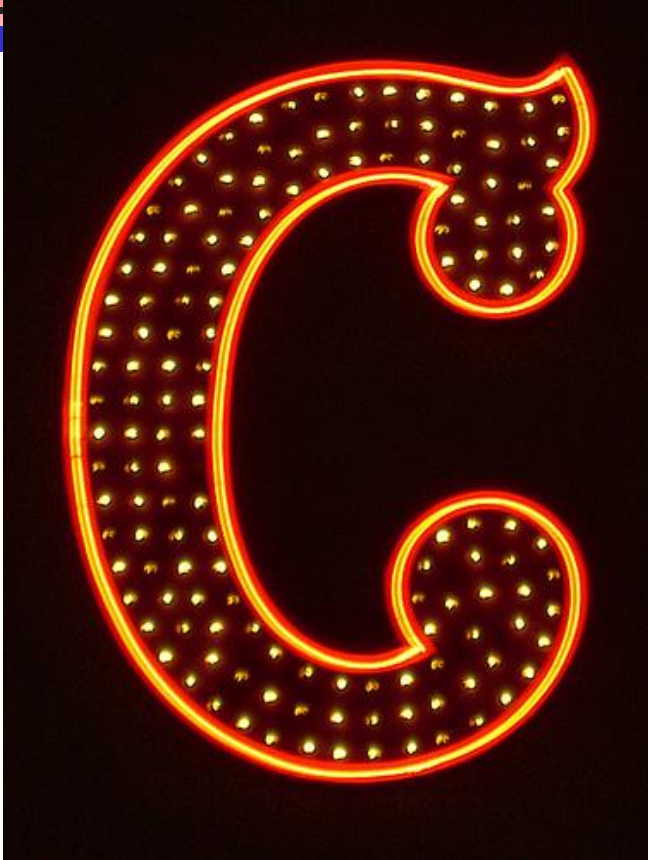
## 律师没有做好法律检索被批的判例Cases where (lack of) legal research discussed

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1. *Lougheed Enterprises Ltd. v. Armbruster* (1992), 63 B.C.L.R. (2nd) 316 (C.A.).
2. *World Wide Treasure Adventures Inc. v. Trivia Games Inc.* (1987), 16 B.C.L.R. 135 (Sup.Ct.).
3. *Gibb v. Jiwan* [1996] O.J. No.1370 (Sup. Ct. of Justice – Gen. Div.).



## 代表好的法律检索的四个 Cs



**orrect**准确

**omprehensive**全面

**Redible**可信

**ost-effective**经济（省  
时、省钱）



# 法律检索与其他学科的检索有何不同？

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- 要通晓各种法律文献及其相互的关系
- 如何运用法律资源来解决法律问题？
- 常需要利用多种资源，而且每种资源的检索技巧和手段可能都不一样
- 常需要全面检索所有原始资源
- 检索到的法律是否最新？
  - 法律是个有机体（Law is **organic**）



# 主要内容

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- 第一部分 法律文献检索导论
- 第二部分 中国法律检索
- 第三部分 国际法律检索
- 第四部分 外国法律检索：美国、日本、英国、法国、德国等



# Pathfinder 法律检索指南、文献检索报告

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- 结合你们的论文选题
- 这门课的课后作业
- 汇报
- 成绩





# 选题

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## ■ 选题要点：

- 小：小到足以把握。
- 新：不要耕熟地。
- 熟：熟悉。

## ■ 常见问题：

- 过大、过旧、过生；
- 根源在于检索不够。



# “四部研究法”

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- **【经】** 问题提出——中心 **【思想】** ；
- **【史】** 文献综述——二手 **【材料】** ；
- **【子】** 素材梳理——一手 **【材料】** ；
- **【集】** 学术阐释——理论 **【分析】** ；



# 第一部分 法律文献检索导论

- 法律资源分类 **Sources of Law**
  - 一、原始、一次、规范性法律资源Primary Source
  - 二、二次法律资源Secondary Source
  - 三、强制性规范Mandatory Authority
  - 四、说服力规范Persuasive Authority
- 问题： 一个国家有几种权利机关？



# Three Branches of US Government 美国政府的三权分立

Legislative



Executive



Judicial





## NPC 立法



司法

行政



法律资源（渊源）：原始 **vs.** 二次？



# Primary Sources (Types) of Law

## 原始（一次）法律资源（渊源）

- Legislative (Congress) 立法（议会）
  - Statutes enacted by elected bodies 成文法
- Executive (President and Agencies) 行政
  - Executive Orders and Directives from President) 行政命令
  - Rules and Regulations 法规
- Judicial (Judges and Courts) 司法
  - Opinions issued by Courts 判例



# Primary Sources

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1. Statutes: bills, acts, statute compilation, codes,
2. Administrative Regulations: regulations, rules, executive orders, regulation/rule compilations, administrative code,
3. Judicial interpretations, cases, court rules, sentencing guidelines, etc.





# Secondary Sources 二次资源: about law 解释法律

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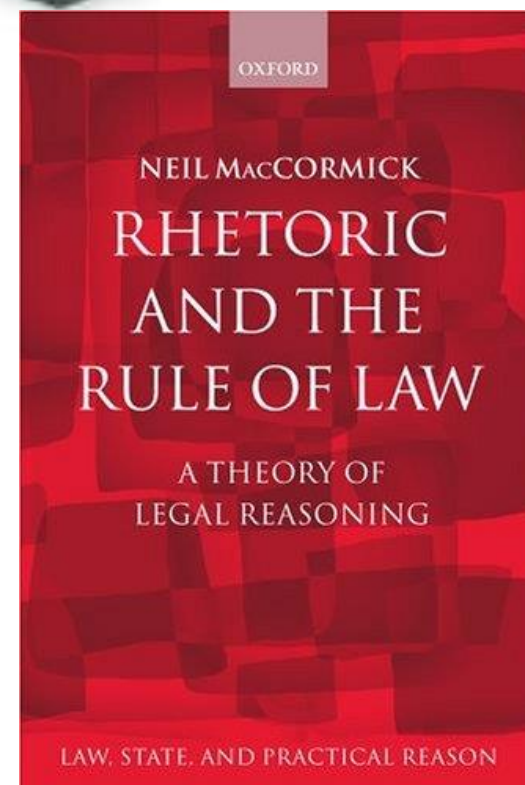
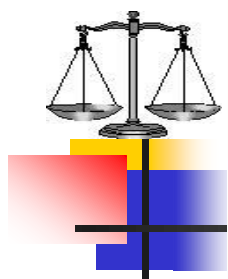
- Legal Textbooks: case books 法学教材：案例书
- Study Aids: hornbooks, nutshells, etc. 学习辅导
- Legal Encyclopedias 法律百科全书
- Legal Periodicals 法律期刊
- Monographs 学术专著
- Treatises 法律分题综述
- Practicing Guides 执业指南
- Etc. 等



# Secondary Sources

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- Textbooks
- Periodicals: journals, law reviews, magazines, newsletters, newspaper
- Monographs 专著
- Practicing materials 实务
- Legal encyclopedias
- Legal Dictionaries





# 渊源： 原始文献 v. 二次文献 Primary v. Secondary Source

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或 规范性法律资源v.非规范性法律资源

Statutes, court opinions, administrative  
regulations 法律、判例、行政法规

v.

commentary on the law 讲解法律

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- ☐ USCS - Federal Rules Annotated [i](#)
- ☐ CFR - Code of Federal Regulations [i](#)
- ☐ FR - Federal Register [i](#)
- ☐ Federal Agency Decisions, Combined [i](#)

States Legal - U.S. [View more](#)

- California
- Florida
- Georgia
- Illinois
- New Jersey
- New York
- Ohio
- Pennsylvania

Area of Law - By Topic [View more](#)

- Banking & Financial Services
- Bankruptcy
- Environment
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- Labor & Employment
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Secondary Legal [View more](#)

- Emerging Issues Analysis
- Matthew Bender(R)
- CLE Materials
- Jurisprudences, ALR & Encyclopedias
- Law Reviews & Journals
- Jurisprudences, Restatements and Principles of the Law
- BNA
- Tax Analysts
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- [Patent Law Practice Center](#)
- [Banking & Compliance Practice Center](#)



# 效力：强制性规范 v 非强制性规范

## Binding v. persuasive Authority

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- 强制性规范：宪法、法律、法规、法律解释、“案例？”
- 非强制（说服）性规范：X省的法规对Y省是非强制性规范、行业公会制定的规则、法学理论



# 法律渊源和法律效力比较

## 渊源

- 规范性或原始资源：  
宪法、法律、法规、  
法律解释、“案例”
- 非规范性或二次资源：  
法学专著、文章，法  
律百科等

## 效力

- 强制性规范：宪法、  
法律、法规、法律解  
释、“案例”
- 非强制（说服）性规  
范： X省的法规对 Y  
省是非强制性规范、  
行业公会制定的规则、  
法学理论





# 法律检索的目的

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- 找到能引用的强制性法律规范文献，  
或
- 非强制性但有说服力的法律文献



# 法律信息载体

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- 纸质：图书、报刊
- 微缩胶带胶片 microforms: old newspapers
- 电子 digital: CD-Rom, flash drive, portable hard drive, database
- 网络 Internet:



# 法律检索概述

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- 检索步骤Legal Research Process
  - （一）问题分析Spot out issues
  - （二）选择检索工具或数据库research tools or database
  - （三）检索策略Research strategies
- 布尔检索法(Boolean Search Concepts)
- 检索结果评估Evaluate results



# Questions?

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